



FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

APR 14 2009

PATRICIA PRESLEY, COURT CLERK
by [Signature]
DEPUTY

Kirby-Smith Machinery, Inc.,)
)
Plaintiff,)
)
v.)
)
AOK Construction, LLC, and)
Continental Energy Services, LLC,)
)
Defendants.)

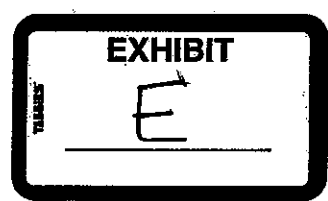
Case No. CJ-2009-3493

FIRST AMENDED PETITION

FIRST CAUSE OF ACTION

Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation ("Plaintiff" or "Kirby-Smith"), for its First Cause of Action against Defendant, AOK Construction, LLC, a Oklahoma limited liability company ("AOK Construction"), states:

1. On or about September 30, 2008, a certain credit application, which is attached hereto as Exhibit "A," was signed and delivered to Kirby-Smith pursuant to which Kirby-Smith opened a commercial credit account in the name of AOK Construction for the purpose of charging the rental of cranes, heavy equipment, and industrial equipment from Kirby-Smith and charging parts, goods, labor, and services from Kirby-Smith.
2. Based on said commercial credit account and as set forth on Kirby-Smith's statement of account, which is attached hereto as Exhibit "B," Kirby-Smith rented a certain heavy equipment and accessories therefor; provided certain parts and goods; and provided repair services, including related parts, goods and labor.
3. AOK Construction is indebted to Kirby-Smith as set forth on Kirby-Smith's statement of account, Exhibit "B," for equipment rental charges and other charges related thereto,



including accessories, taxes, delivery fees, parts, goods, and services; for parts and goods; and for repair services, including related parts, goods and labor, in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Kirby-Smith's attorneys, which account, Exhibit "B," is correct and which amounts are just, due, and owing by AOK Construction to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendant, AOK Construction, LLC, an Oklahoma limited liability company, on its First Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

SECOND CAUSE OF ACTION

Kirby-Smith, for its Second Cause of Action against Defendant, Continental Energy Services, LLC, a Delaware limited liability company ("Continental"), states:

4. Kirby-Smith adopts, realleges, restates and incorporates herein by reference all statements and allegations of Kirby-Smith's First Cause of Action as if fully set forth herein.

5. Continental took the place of, and the assets of, AOK Construction. That there was a consolidation or merger of AOK Construction and Continental.

6. Continental expressly or implicitly agreed to assume or pay the indebtedness referred to above to Kirby-Smith.

7. Continental was, and is, a continuation of AOK Construction.

8. AOK Construction's transfer of all or substantially all its property to Continental was fraudulent in fact.

9. AOK Construction's transfer of all or substantially all its property to Continental was fraudulent within the meaning of the Oklahoma Fraudulent Transfer Act, 24 O.S. §§ 112 to 123.

10. Continental is the alter ego of AOK Construction.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., prays judgment against Defendants, Continental Energy Services, LLC, a Delaware limited liability company, on its Second Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the contract rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

THIRD CAUSE OF ACTION

Kirby-Smith, for its Second Cause of Action against AOK Construction and Continental, states:

11. Kirby-Smith furnished valuable parts, goods, labor, and services to AOK Construction and Continental with a reasonable expectation of being compensated.

12. AOK Construction and Continental knowingly accepted the benefit of Kirby-Smith's parts, goods, labor, and services.

13. AOK Construction and Continental would be unfairly benefitted by receiving Kirby-Smith's parts, goods, labor, and services if no compensation were paid to Kirby-Smith.

14. The fair value of the parts, goods, labor, and services that Kirby-Smith furnished to AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid,

and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Third Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

FOURTH CAUSE OF ACTION

Kirby-Smith, for its Fourth Cause of Action against AOK Construction and Continental, states:

15. AOK Construction and Continental voluntarily accepted the benefits of Kirby-Smith's offer to obtain parts, goods, and services from Kirby-Smith when AOK Construction and Continental knew or should have known that Kirby-Smith made the offer intending to receive payment therefor.

16. As AOK Construction and Continental knew or should have known, and as shown by the statement of account, Exhibit "B," the specific benefit that Kirby-Smith intended to receive from AOK Construction and Continental is the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid, and for all costs, accrued and accruing, including a reasonable attorneys' fee for Plaintiff's attorneys, which amounts are just, due, and owing by AOK Construction and Continental to Kirby-Smith.

WHEREFORE, Plaintiff, Kirby-Smith Machinery, Inc., an Oklahoma corporation, prays judgment against Defendants, AOK Construction, LLC, an Oklahoma limited liability company, and Continental Energy Services, LLC, a Delaware limited liability company, on its Fourth Cause of Action in the sum of \$730,683.24, with prejudgment and postjudgment interest on said sum at the rate of 18.00% per annum from and including April 1, 2009, until paid; for all costs, accrued and accruing, including a reasonable attorneys' fee for the plaintiff's attorneys; and for such other and further relief as this Court deems just and equitable.

Respectfully Submitted,



Clay P. Booth, OBA #11767

- for the firm -

ATTORNEYS' LIEN CLAIMED

KLINE, KLINE, ELLIOTT & BRYANT, P.C.

720 NE 63rd Street

Oklahoma City, OK 73105-6405

Telephone: (405) 848-4448

Facsimile: (405) 842-4539

Attorneys for Plaintiff, Kirby-Smith Machinery, Inc.

Kirby-Smith Machinery, Inc. v. AOK Construction, LLC, et al.
Oklahoma County District Court, Case No. CJ-2009-3493
First Amended Petition

3890-088

AOK CONSTRUCTION, LLC



COMPANY NAME: AOK CONSTRUCTION, LLC
MAILING ADDRESS: P.O. BOX 308 MCALISTER, OK 74502
SHIPPING ADDRESS: 9055 E. HWY 270, MCALISTER, OK 74502
OWNER'S NAME: CONTINENTAL ENERGY SERVICES
TYPE OF BUSINESS: UNDERGROUND PIPELINE
TAX ID#: 73-1697809 **PO REQUIRED:** YES
BANK NAME: LASALLE BANK N.A.
ADDRESS: 135 S LASALLE CHICAGO, IL 60603
TELEPHONE #: 312-204-9028 **CONTACT:** SEAN SILVER

CREDIT REFERENCES:
KIRBY SMITH MACHINERY
PO BOX 270360
OKC, OK 73157
TELEPHONE #: 405-485-7820
FAX: 405-757-5973

NAPA AUTO
PO BOX 67
MCALISTER, OK 74501
TELEPHONE #: 918-423-4026
FAX #: 918-423-4763

WESTERN SUPPLIES
BOX 551
WICHITA FALLS, TX 76307
TELEPHONE #: 840-855-3401
FAX #: 840-855-7632

WARREN CAT
DEPT 1944
TULSA, OK 74182
TELEPHONE #: 918-627-4500
FAX #: 918-600-2392

PO Box 308 • 9055 E. Highway 270 • McAlester, OK 74502 • 918 423-1341 • Fax 918-423-1342
aokconstructionll@earthlink.net

Dreg D. Karpinsky - Pres.



KIRBY-SMITH

MACHINERY, INC.



Customer 918429
AOK CONSTRUCTION, L.L.C.
April 10, 2009
Balance \$730,683.24

	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
1.	11/30/07	SC032120	001		58.86			58.86
2.	12/06/07	R43642	002	R	8,534.54			8,534.54
3.	12/12/07	R43810	002	R	8,138.78			8,138.78
4.	12/25/07	R44185	002	R	4,883.27			4,883.27
5.	12/25/07	R44210	002	R	5,371.59			5,371.59
6.	12/31/07	SC032397	001		741.06			741.06
7.	1/22/08	R45179	004	R	4,812.42			4,812.42
8.	1/22/08	R45180	002	R	4,730.57			4,730.57
9.	1/22/08	R45181	002	R	6,348.24			6,348.24
10.	1/31/08	SC032651	001		1,653.81			1,653.81
11.	2/05/08	R45641	002	R	6,369.95			6,369.95
12.	2/29/08	SC032900	001		1,803.62			1,803.62
13.	3/31/08	SC033140	001		2,213.92			2,213.92
14.	4/30/08	SC033373	001		12,883.42			12,883.42
15.	5/17/08	T62111	002	C	4,216.43			4,216.43
16.	5/29/08	R49939	002	R	8,301.55			8,301.55
17.	5/29/08	R49957	004	R	4,851.00			4,851.00
18.	5/31/08	SC033621	001		14,999.29			14,999.29
19.	6/30/08	SC033859	001		4,488.03			4,488.03
20.	7/31/08	R52206	002	R	17,459.21	11,639.48-		5,819.73
21.	7/31/08	SC034081	001		5,732.59			5,732.59
22.	7/31/08	U52529	002	W	2,344.79			2,344.79
23.	8/05/08	R52316	002	R	4,883.27			4,883.27
24.	8/26/08	R53060	002	R	2,194.60			2,194.60
25.	8/31/08	SC034320	001		10,666.69			10,666.69
26.	9/05/08	R53603	002	R	162.78			162.78
27.	9/06/08	R53648	002	R	325.55			325.55
28.	9/09/08	R53676	002	R	218.00			218.00
29.	9/16/08	R53974	002	R	2,821.44	741.10-	2,821.44-	741.10-
30.	9/17/08	T66255	002	C	2,037.82			2,037.82
31.	9/23/08	R54126	002	R	7,433.41			7,433.41
32.	9/30/08	R54430	002	R	3,776.87			3,776.87
33.	9/30/08	SC034575	001		12,568.52			12,568.52
34.	10/04/08	R54621	002	R	3,808.95	3,808.95-	3,808.95	3,808.95
35.	10/07/08	R45174	002	R			4,883.27-	4,883.27-
36.	10/17/08	R55039	002	R	4,340.68	340.68-	4,340.68-	340.68-
37.	10/21/08	R55118	004	R	4,167.45	1,147.45-		3,020.00
38.	10/21/08	R55122	002	R	4,736.77			4,736.77
39.	10/24/08	R55346	002	R	5,635.50			5,635.50
40.	10/31/08	SC034824	001		4,930.54			4,930.54
41.	11/05/08	R55665	002	R	5,263.07		10,526.14-	5,263.07-
42.	11/14/08	R56082	002	R	4,340.68	340.68-	4,340.68-	340.68-
43.	11/18/08	R56161	002	R	7,433.41			7,433.41
44.	11/18/08	R56164	002	R	4,736.77			4,736.77
45.	11/19/08	R56242	002	R	6,348.24			6,348.24
46.	11/20/08	R56283	002	R	4,736.77			4,736.77
47.	11/21/08	R56353	002	R	5,635.50	1,874.89-	1,874.89	5,635.50

TEL (405) 495-7820

Remit to:
KSM Exchange, LLC
P.O. Box 270360
Oklahoma City, OK 73127

FAX (405) 44



KIRBY-SMITH MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
48.	11/22/08	R56368	004	R	4,812.42			4,812.42
49.	11/25/08	R56394	002	R	3,650.07			3,650.07
50.	11/25/08	R56395	002	R	4,883.27			4,883.27
51.	11/25/08	R56396	002	R	6,348.24	2,116.08-	2,116.08	6,348.24
52.	11/25/08	R56397	002	R	3,776.87			3,776.87
53.	11/25/08	R56400	002	R	5,371.59			5,371.59
54.	11/25/08	R56403	002	R	217.03			217.03
55.	11/25/08	R56476	002	R	3,808.95	3,808.95-	1,798.84	1,798.84
56.	11/25/08	R56477	002	R	325.55			325.55
57.	11/25/08	R56478	002	R	3,906.61			3,906.61
58.	11/25/08	R56479	002	R	4,730.57			4,730.57
59.	11/25/08	R56480	002	R	162.78			162.78
60.	11/25/08	R56481	002	R	217.50			217.50
61.	11/25/08	R56483	002	R	4,730.57	1,414.30-	1,414.30	4,730.57
62.	11/25/08	R56484	002	R	2,674.95			2,674.95
63.	11/25/08	R56485	002	R	1,551.79			1,551.79
64.	11/25/08	R56486	002	R	4,796.00	3,188.25-	3,188.25	4,796.00
65.	11/25/08	R56487	002	R	5,668.00			5,668.00
66.	11/26/08	R56504	004	R	4,851.00			4,851.00
67.	11/29/08	R56604	004	R	4,851.00			4,851.00
68.	11/30/08	8C035050	001		4,954.18			4,954.18
69.	12/04/08	R56640	002	R	4,883.27			4,883.27
70.	12/04/08	R56647	002	R	4,736.77			4,736.77
71.	12/04/08	R56651	002	R	8,534.54	5,689.69-		2,844.85
72.	12/04/08	R56663	002	R	4,796.00			4,796.00
73.	12/05/08	R53428	002				3,776.87-	3,776.87-
74.	12/05/08	R56785	002	R	5,642.88			5,642.88
75.	12/06/08	R56808	002	R	6,369.95			6,369.95
76.	12/06/08	T67308	002	C	2,998.51			2,998.51
77.	12/09/08	R56826	002	R	4,736.77			4,736.77
78.	12/09/08	R56828	002	R	4,883.27			4,883.27
79.	12/10/08	L15991	004	C	71.34			71.34
80.	12/10/08	R56890	002	R	6,348.24			6,348.24
81.	12/10/08	R56892	002	R	4,730.57			4,730.57
82.	12/10/08	R56894	002	R	8,138.78			8,138.78
83.	12/10/08	R56897	002	R	4,768.50			4,768.50
84.	12/11/08	R56927	002	R	6,348.24			6,348.24
85.	12/11/08	R56928	002	R	8,301.55			8,301.55
86.	12/12/08	R56984	002	R	4,000.00			4,000.00
87.	12/16/08	R57072	002	R	2,194.60			2,194.60
88.	12/16/08	R57075	002	R	4,736.77			4,736.77
89.	12/17/08	R57183	002	R	6,348.24	1,410.72-		4,937.52
90.	12/17/08	U53830	002	W	228.90			228.90
91.	12/18/08	R57228	002	R	4,736.77	4,274.77-	4,274.77	4,736.77
92.	12/19/08	R57283	002	R	2,682.29			2,682.29
93.	12/23/08	R57336	002	R	3,650.07			3,650.07
94.	12/23/08	R57337	002	R	4,883.27			4,883.27
95.	12/23/08	R57339	004	R	4,812.42			4,812.42
96.	12/23/08	R57340	002	R	3,776.87			3,776.87
97.	12/23/08	R57344	002	R	5,371.59			5,371.59
98.	12/23/08	R57345	002	R	217.03			217.03

Remit to:

KSM Exchange, LLC
P.O. Box 270360
Oklahoma City, OK 73127

FAX (405) 440-0112

TEL (405) 495-7820



KIRBY-SMITH MACHINERY, INC.



	Date	Invoice	Br	SD	Charges	Adjustments	Payments	Total
99.	12/23/08	T69495	002	C	1,699.61			1,699.61
100.	12/23/08	U54193	002	W	349.61			349.61
101.	12/24/08	R57413	002	R	2,674.95			2,674.95
102.	12/24/08	R57434	002	R	1,551.79			1,551.79
103.	12/24/08	R57435	002	R	4,796.00	4,796.00-	2,239.96	2,239.96
104.	12/24/08	R57441	002	R	5,668.00			5,668.00
105.	12/24/08	R57444	002	R	325.55			325.55
106.	12/24/08	R57445	002	R	4,883.27			4,883.27
107.	12/24/08	R57446	002	R	3,906.61			3,906.61
108.	12/24/08	R57448	002	R	4,730.57			4,730.57
109.	12/24/08	R57449	002	R	162.78			162.78
110.	12/24/08	R57450	002	R	4,736.77	2,336.88-		2,399.89
111.	12/24/08	T69517	002	C	88.57			88.57
112.	12/24/08	T69519	002	C	602.07			602.07
113.	12/26/08	R57479	004	R	4,851.00			4,851.00
114.	12/30/08	R57500	002	R	217.50			217.50
115.	12/30/08	R57511	004	R	4,851.00	1,639.78-		3,211.22
116.	12/31/08	SC035295	001		6,673.94			6,673.94
117.	12/31/08	U53593	002	W	9,544.61			9,544.61
118.	1/06/09	R57699	002	R	6,369.95			6,369.95
119.	1/06/09	R57702	002	R	4,736.77			4,736.77
120.	1/06/09	R57707	002	R	4,883.27			4,883.27
121.	1/06/09	R57727	002	R	5,642.88			5,642.88
122.	1/07/09	R57804	002	R	6,348.24			6,348.24
123.	1/07/09	R57807	002	R	4,730.57			4,730.57
124.	1/07/09	R57812	002	R	4,768.50			4,768.50
125.	1/07/09	U53910	002	W	2,193.20			2,193.20
126.	1/08/09	R57851	002	R	6,348.24			6,348.24
127.	1/08/09	R57852	002	R	8,301.55			8,301.55
128.	1/09/09	R57889	002	R	4,000.00			4,000.00
129.	1/10/09	T69902	002	C	108.95			108.95
130.	1/13/09	R57959	002	R	2,194.60			2,194.60
131.	1/13/09	R57961	002	R	4,736.77			4,736.77
132.	1/16/09	R58117	002	R	2,682.29			2,682.29
133.	1/17/09	R58149	002	R	266.00			266.00
134.	1/20/09	R58172	002	R	3,650.07			3,650.07
135.	1/20/09	R58173	002	R	4,883.27			4,883.27
136.	1/20/09	R58175	002	R	3,776.87			3,776.87
137.	1/20/09	R58181	002	R	217.03			217.03
138.	1/21/09	R58232	002	R	2,674.95	1,182.84-		1,492.11
139.	1/21/09	R58234	004	R	126.00			126.00
140.	1/21/09	T70193	002	C	4,939.13			4,939.13
141.	1/22/09	R58252	002	R	3,906.61			3,906.61
142.	1/22/09	R58253	002	R	4,730.57			4,730.57
143.	1/22/09	R58255	004	R	4,812.42	2,408.57-		2,403.85
144.	1/23/09	R58278	002	R	162.78			162.78
145.	1/23/09	R58287	002	R	5,668.00			5,668.00
146.	1/23/09	U54329	002	W	3,444.17			3,444.17
147.	1/24/09	R58319	002	R	325.55			325.55
148.	1/24/09	R58320	002	R	574.00			574.00
149.	1/27/09	R58354	002	R	218.00			218.00

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

FAX (405) 440-0112

TEL (405) 495-7820



KIRBY-SMITH

MACHINERY, INC.



150.	1/27/09	R58357	002 R	1,551.79	1,036.34-	515.45
151.	1/27/09	T70365	002 C	618.66		618.66
152.	1/29/09	R58423	002 R	4,883.27		4,883.27
153.	1/30/09	R58459	002 R	5,642.88		5,642.88
154.	1/31/09	K80480	001 W	1,292.22		1,292.22
155.	1/31/09	SC035530	001	6,090.08		6,090.08
156.	1/31/09	T70158	002 C	495.28		495.28
157.	1/31/09	U54442	002 W	4,434.91		4,434.91
158.	1/31/09	U54476	002 W	1,313.85		1,313.85
159.	2/05/09	R58530	002 R	6,348.24	5,237.88-	1,110.36
160.	2/05/09	R58531	002 R	337.50		337.50
161.	2/05/09	R58534	002 R	4,730.57	4,388.57-	342.00
162.	2/05/09	R58538	002 R	4,883.27		4,883.27
163.	2/05/09	R58550	002 R	4,768.50	1,238.44-	3,530.06
164.	2/05/09	U54201	002 W	7,694.46		7,694.46
165.	2/05/09	U54444	002 W	11,731.53		11,731.53
166.	2/05/09	U54592	002 W	1,060.89		1,060.89
167.	2/10/09	R58695	002 R	2,194.60	1,920.17-	274.43
168.	2/10/09	R58696	002 R	4,736.77	243.93-	4,492.84
169.	2/10/09	R58697	002 R	112.50		112.50
170.	2/13/09	R54068	002 R		340.68-	340.68-
171.	2/13/09	R58842	002 R	1,804.45	1,727.95-	76.50
172.	2/13/09	R58844	002 R	2,682.29	2,596.79-	85.50
173.	2/14/09	U54730	002 W	2,864.27		2,864.27
174.	2/17/09	R58896	002 R	3,650.07	2,027.82-	1,622.25
175.	2/17/09	R58897	002 R	4,883.27	3,044.01-	1,839.26
176.	2/17/09	R58902	002 R	217.03		217.03
177.	2/18/09	U54344	002 W	6,019.56		6,019.56
178.	2/19/09	R58976	002 R	3,906.61	2,939.48-	967.13
179.	2/19/09	R58977	002 R	216.75		216.75
180.	2/19/09	U54439	002 W	1,507.19		1,507.19
181.	2/20/09	R59012	002 R	162.78		162.78
182.	2/20/09	R59018	002 R	5,668.00	5,533.00-	135.00
183.	2/21/09	R59038	002 R	325.55	108.52-	217.03
184.	2/26/09	R59161	002 R	67.50		67.50
185.	2/27/09	R59203	002 R	5,642.88	3,472.12-	2,170.76
186.	2/28/09	D08098	004 W	2,894.66		2,894.66
187.	2/28/09	SC035745	001	7,562.08		7,562.08
188.	2/28/09	U54841	002 W	3,020.23		3,020.23
189.	3/04/09	R59270	002 R	171.00		171.00
190.	3/04/09	U54543	002 W	6,412.74		6,412.74
191.	3/04/09	U54842	002 W	1,856.82		1,856.82
192.	3/06/09	U54196	002 W	2,836.63		2,836.63
193.	3/11/09	U54873	002 W	2,693.69		2,693.69
194.	3/13/09	U54886	002 W	6,205.09		6,205.09
195.	3/13/09	U54952	002 W	3,970.78		3,970.78
196.	3/14/09	U54665	002 W	7,927.91		7,927.91
197.	3/17/09	R59633	002 R	217.03		217.03
198.	3/19/09	R59703	002 R	216.75		216.75
199.	3/19/09	U54946	002 W	2,444.30		2,444.30
200.	3/24/09	U55037	002 W	3,255.51		3,255.51
201.	3/31/09	SC035955	001	7,383.77		7,383.77

Remit to:

KSM Exchange, LLC

P.O. Box 270360

Oklahoma City, OK 73127

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FAX (405) 440-0112